

**JUVENILE SENTENCING PROJECT  
Legal Clinic  
Quinnipiac University School of Law**

**March 25, 2019**

**Judiciary Committee**

**Written Testimony in Support of House Bill 7389:  
An Act Concerning Confidentiality in the Case of a Discretionary Transfer of a Juvenile's  
Case to the Regular Criminal Docket and Implementing the Recommendations of the  
Juvenile Justice Policy and Oversight Committee.**

Dear Members of the Joint Committee on Judiciary:

We write to express our **support** of House Bill 7389, which would prohibit children under 18 from being held in any facility operated by the Department of Correction.

In the last decade, our state has been at the forefront of juvenile criminal justice reform, implementing numerous reforms to ensure that kids are not funneled into the adult system but instead treated—as adolescent brain science shows they should be—like children capable of rehabilitation. Our recent progress in this area is grounded on the consensus that children are “different from adults,” have “diminished culpability and greater prospects for reform,” and “are less deserving of the most severe punishments.” *Miller v. Alabama*, 567 U.S. 460, 471 (2012) (citing *Graham v. Florida*, 560 U.S. 48, 68 (2010)).

H.B. 7389 is another step in the right direction. It recognizes that children should not be incarcerated in adult jails and prisons, even if housed separately from adult offenders. Instead, children should be placed in therapeutic settings designed for children and aimed at rehabilitation. These settings accommodate the developmental differences between juvenile and adult offenders and prepare children for release.<sup>1</sup>

Keeping children out of DOC custody acknowledges the fact that children in adult facilities are especially vulnerable. National studies have found children at risk for sexual victimization and five times more likely to commit suicide than children in juvenile facilities.<sup>2</sup>

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<sup>1</sup> See, e.g., Campaign for Youth Justice, *Youth Facilities Are Better than Adult Facilities*, available at <http://www.campaignforyouthjustice.org/images/factsheets/WhyYouth%20Facilities%20Are%20Better%20Than%20Adult%20Facilities.pdf>.

<sup>2</sup> Campaign for Youth Justice, *Let's Get Children Out of Adult Courts, Jails, and Prisons* 1 (2018) (citing data); see also Jessica Lahey, *The Steep Costs of Keeping Juveniles in Adult Prisons*, *The Atlantic* ¶ 3 (Jan. 8, 2016) [hereinafter “*Steep Costs*”], available at <https://www.theatlantic.com/education/archive/2016/01/the-cost-of-keeping-juveniles-in-adult-prisons/423201/>.

Many children in adult facilities are placed in isolation, resulting in further harm.<sup>3</sup> Moreover, children in adult facilities are less likely than their counterparts in juvenile facilities to receive the training and education they need to succeed upon release.<sup>4</sup>

By passing H.B. 7389, Connecticut would be in good company. The number of children held in adult facilities nationally has begun to decrease, thanks to declining youth crime rates and state and federal reforms.<sup>5</sup> Some states already outlaw confinement of juveniles in adult facilities. For example, Oregon prohibits the incarceration of children under 18 in adult prisons under any circumstances; instead, children sentenced under the age of 18 may only be incarcerated at an Oregon Youth Authority facility.<sup>6</sup> So does West Virginia—which further mandates that, prior to transfer from juvenile to adult facilities at the age of 18, a child is returned to the sentencing court for reconsideration and modification of the sentence based on review of post-conviction rehabilitation.<sup>7</sup> Many other states ban the practice absent exceptional circumstances, maintaining, for example, a default presumption that all juveniles remain in juvenile facilities, and requiring specific findings to move a juvenile to an adult facility.<sup>8</sup> In implementing H.B. 7389, Connecticut can draw on the experience, lessons and implementation models from these other jurisdictions.

Finally: As the Juvenile Justice Policy and Oversight Committee continues to study age-appropriate conditions of confinement for Connecticut juveniles, we urge it to heed the recent recommendations of the State of Connecticut Office of the Child Advocate to (1) severely limit the time youth can be confined in their cells as a behavioral intervention, and (2) to ban the use of chemical restraints on children. *See Incarcerated/Detained Youth – An Examination of*

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<sup>3</sup> Campaign for Youth Justice, *Key Facts: Youth in the Justice System* 5 (June 2016) [hereinafter *Key Facts: Youth in the Justice System*], available at <http://cfyj.org/images/factsheets/KeyYouthCrimeFactsJune72016final.pdf>.

<sup>4</sup> *Steep Costs* ¶ 12; *All Children Are Children: Challenging Abusive Punishment of Juveniles* 10 (2017), available at <https://ejj.org/sites/default/files/AllChildrenAreChildren-2017-sm2.pdf>.

<sup>5</sup> Campaign for Youth Justice, *Raising the Bar: State Trends in Keeping Youth Out of Adult Courts (2015-2017)* 21 (2017), available at [http://www.campaignforyouthjustice.org/images/StateTrends\\_Report\\_FINAL.pdf](http://www.campaignforyouthjustice.org/images/StateTrends_Report_FINAL.pdf).

<sup>6</sup> Or. Rev. Stat. § 137.124(5).

<sup>7</sup> W. Va. Code § 49-4-720.

<sup>8</sup> *See, e.g.*, Va. Code § 16.1-249(B), (D), (E), (F), (G) (providing that juveniles are not to be detained or confined in adult jails or detention facilities, even if transferred to the adult system for prosecution, unless the juvenile is found to be a threat to the security or safety of the other juveniles at the facility); N.J. S. § 2A:4A-36 (providing, *inter alia*, that prior to and upon conviction “there shall be a presumption that the juvenile shall be detained in a county juvenile detention facility, unless good cause is shown that it is necessary to detain the juvenile in a county jail or other county correctional facility in which adults are incarcerated”); Col. Rev. Stat. § 19-2-508(3)(c) (requiring that juveniles awaiting trial as adults be held in juvenile facilities unless the district court finds after a hearing that detention in an adult facility is appropriate); Oh. Rev. Code § 2152.26(4)(a) (providing a default of detention in juvenile facilities for juveniles awaiting trial in adult court; transfer is possible only upon motion and after a showing by a preponderance of the evidence that the youth is a threat to the safety and security of the juvenile facility); Wash. Rev. Code § 72.01.410(1)(a) (mandating that any child convicted of a felony in adult court with an earned release date prior to age 21 must be transferred to the custody of the department of social and health services and given access to the same resources and services as children in the juvenile system).

*Conditions of Confinement*, State of Connecticut Office of the Child Advocate 85 (January 16, 2019) (stating that, *inter alia*, “Connecticut should ban solitary confinement of minors,” and “State law should prohibit the use of chemical agents on children/youth by all local and state agencies.”). Neither of these critical reforms is fully addressed in the current legislation, but they are both imperative for creating a rehabilitation-focused system that treats children holistically and age appropriately. Subjecting children to isolation in confinement is exceedingly dangerous—it hampers neurological and social development,<sup>9</sup> causes or exacerbates mental health problems,<sup>10</sup> and often results in physical harm.<sup>11</sup> Use of chemical restraints on children is similarly problematic, and has in fact been repudiated by many correctional authorities.<sup>12</sup> Accordingly, while we strongly support H.B. 7389’s ban on the placement of children in adult facilities, we also urge legislative attention to these pressing issues in the near term.

Thank you for your consideration.

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<sup>9</sup> Jessica Feierman et al., *Unlocking Youth: Legal Strategies to End Solitary Confinement in Juvenile Facilities*, Juvenile Law Center 10-13 (2017), available at [http://jlc.org/sites/default/files/publication\\_pdfs/JLC\\_Solitary\\_ReportFINAL\\_0.pdf](http://jlc.org/sites/default/files/publication_pdfs/JLC_Solitary_ReportFINAL_0.pdf).

<sup>10</sup> American Academy of Child & Adolescent Psychiatry, *Solitary Confinement of Juvenile Offenders* (April 2012) (“The potential psychiatric consequences of prolonged solitary confinement are well recognized and include depression, anxiety, and psychosis. Due to their developmental vulnerability, juvenile offenders are at particular risk of such adverse reactions. Furthermore, the majority of suicides in juvenile correctional facilities occur when the individual is isolated or in solitary confinement.”), available at [https://www.aacap.org/aacap/Policy\\_Statements/2012/Solitary\\_Confinement\\_of\\_Juvenile\\_Offenders.asp](https://www.aacap.org/aacap/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.asp).

<sup>11</sup> Human Rights Watch & American Civil Liberties Union, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States* 37-41 (2012), available at <https://www.aclu.org/files/assets/us1012webwcover.pdf>.

<sup>12</sup> *Incarcerated/Detained Youth – An Examination of Conditions of Confinement*, State of Connecticut Office of the Child Advocate 13-14 (January 16, 2019).